Filed 4/6/04 In re Michael K. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MICHAEL K. et al., Persons Coming Under the Juvenile Court Law.	B170374 (Los Angeles County Super. Ct. No. CK47930)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ASYESHAH K., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed in part, reversed in part, and remanded.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, Frank J. DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Asyeshah K., the mother, appeals from the juvenile court's October 1, 2003, order terminating her parental rights as to her four children. The children are ten-year-old Michael K., nine-year-old twins, Ryan F. and Cheyenne F., and two-year-old Chelsea G. We reverse the order terminating the mother's parental rights and remand for proper inquiry and compliance with the notice provisions of the Indian Child Welfare Act. (25 U.S.C. § 1912(a).) If after proper inquiry and notice it is determined the children are subject to the Indian Child Welfare Act, the juvenile court is to conduct a new Welfare and Institutions Code[1] section 366.26 hearing. Under these circumstances, the new permanency planning hearing is to be conducted in conformity with all of the provisions of the Indian Child Welfare Act. If, on the other hand, no response is received or it is determined that the youngsters *are not* Indian children, the order terminating the mother's parental rights shall be reinstated. In all other respects, the order terminating parental rights is affirmed.

II. BACKGROUND

A. The Detention

The Department of Children and Family Services (the department) filed a section 300 petition with respect to the children on March 15, 2002. The subsequently sustained allegations were: the children were periodically exposed to violent altercations between their mother and her male companion; the mother had left the children alone without adequate adult supervision; the home was unsanitary; the mother failed to insure the

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

children attended school regularly; the mother failed to insure the children had minimally sufficient levels of personal hygiene; and the mother failed to provide the children with adequate food.

The family had been the subject of multiple prior referrals for neglect and abuse, most of which were found to be unsubstantiated. The family had received voluntary family maintenance services for general neglect in 1999. Those services terminated in March 2000. In early 2002, the children's school received reports: the youngsters were being neglected; the mother was using drugs; and the children were not fed or otherwise properly cared for by the mother. Additionally, there was an allegation that Cheyenne may have been sexually abused. School administrators reported: the mother was difficult to contact; she had not attended individualized education program meetings; the children had hygiene problems; the only meals they ate were those served at school; the children had attendance problems; and the children's academic performance was poor. In response, a department social worker advised the mother to: clean up the family residence, which was filthy; take the children for physical examinations; and undergo drug testing. The mother failed to comply. As a result, on March 12, 2002, the children were detained.

The detention hearing was held on March 15, 2002. The mother and the maternal great grandmother advised the trial court the children's grandfather had Black Foot and Cherokee heritage. The trial court directed the social worker to interview a great grandmother, Cokeese K., to clarify that information. There was no further mention of Indian heritage or the Indian Child Welfare Act. The department's subsequent reports all stated the Indian Child Welfare Act was inapplicable.

The mother and the children reported that the mother's boyfriend had hit her on prior occasions. On July 4, 2001, the boyfriend had beaten the mother. The children were present in the home during at least some of these incidents, but the boyfriend never hit the mother in the immediate presence of the youngsters. The boyfriend was no longer in the home. There was also evidence the mother sometimes left the children home alone.

Initially, the children said they loved their mother and wanted to go home. There was evidence, however, that they exhibited a lack of attachment to the mother. The clearest evidence of this detachment involved the youngest child, Chelsea G. Chelsea was just over one-year old at the time of the detention. Chelsea batted at the mother. Also, Chelsea tried to get away from the mother, a reaction termed "dissociative attachment." A supervising social worker with a foster family agency, Dr. Susan M. Love, Ph.D., reported: "Chelsea is observed to have an insecure-disorganized/dissociated 'D' attachment with her mother. 'D' babies are indicative of babies who are chronically abused, frightened or neglected by the primary caretaker. An infant has no adaptive response to the stress of the neglect or abuse, and the infant's behavior becomes disorganized. In the case of Chelsea, she reportedly refuses to make eye contact with her mother, she swats at her mother, blocks her face so the mother cannot see her, and turns her body 90 degrees away from the mother. If placed on the floor, Chelsea crawls away from the mother as fast as possible."

B. The Mother

Initially, the mother denied any drug problem and refused to undergo narcotics testing. On April 24, 2002, the mother was ordered to attend department approved programs of drug rehabilitation with random testing, parent education, and individual counseling to address "case issues incl[uding] domestic violence—victims." By the end of May 2002, the mother had been visiting the children regularly, but she had not complied with the court-ordered case plan. In addition, the mother was not in contact with the department and her whereabouts were unknown.

The mother failed to undergo random drug testing on 10 dates from May 3, 2002, to July 29, 2002. Tests taken on June 13 and 19, 2002, were both positive for cannabinoids (hemp). On July 25, 2002, however, the mother enrolled in a six-month inpatient substance abuse and rehabilitation program. Three subsequent drug tests—September 16 and 30, and October 9, 2002—were negative.

In January 2003, the mother completed her drug rehabilitation program and was admitted, on January 16, 2003, to a sober living program. However, the mother left the facility on a weekend pass on February 8, 2003, and never returned. As a result, on February 10, 2003, she was discharged from the program. A department social worker spoke with the mother on March 12, 2003. The mother had not been drug testing. She agreed to test on that date in exchange for a bus pass to facilitate visitation. The March 12, 2003, test was positive for cocaine.

On June 17, 2003, four months after being discharged from the sober living facility, the mother entered an outpatient drug rehabilitation program. On June 20, June 23, and July 2, 2003, she tested positive for cocaine. On July 14, 2003, administrators learned the mother was pregnant. As a result, she was discharged from the drug rehabilitation program. The mother was then referred to a program for pregnant substance abusers. By July 25, 2003, the mother had not enrolled in that program. On August 13, 2003, the mother suffered a miscarriage. Also on that date, she tested positive for cocaine. The mother admitted she was in no condition to parent anyone. On August 19, 2003, the mother reenrolled in a drug treatment program. The section 366.26 hearing was held shortly thereafter, on October 1, 2003.

C. Ryan and Cheyenne

Cheyenne and Ryan, twin siblings, were placed with their maternal great aunt, Crystal B., in April 2002. The twins remained in her home at all relevant times. The children adjusted well to their placement and enjoyed residing in their great aunt's home. Both Ryan and Cheyenne felt secure and happy in their maternal great aunt's home. When it became clear the mother would not be able to care for the children, the great aunt expressed her desire to adopt them.

Upon their detention, Ryan and Cheyenne had exhibited verbal and social delays characteristic of neglected children. Ryan was suspicious of other people and spoke very little. Cheyenne was "gregarious," but said she was sad. The children were aggressive

with each other and had difficultly with any kind of structure or boundaries. In addition, both children had a history of below grade-level academic performance. After attending summer school, receiving extra help, and attending school consistently, their grades improved. As of spring 2003, Cheyenne was performing at grade level in some areas. Her reading and writing skills had improved. However, Cheyenne's behavior and work habits were inconsistent. As of March 2003, Ryan was performing at grade level in all areas. His behavior had improved "a great deal." In June 2004, it was reported that Ryan had scored above grade level in all subject areas. Ryan's teacher, identified only as Ms. Donley, reported it was a pleasure to have him in her class.

In October 2002, following their detention, both Cheyenne and Ryan were found to be exhibiting depressive symptoms and were placed on psychotropic medication. As of February 2003, Cheyenne had made limited progress toward her mental health treatment goals. Cheyenne resisted discussing the mother. Further, Cheyenne did not like to discuss her experiences prior to her detention. Christine Slagle, a therapist, reported that Ryan had "responded well to therapy and medication." Ryan's aggressive and defiant behaviors had diminished and he was less withdrawn. By July 2003, Ryan had improved sufficiently that he no longer needed medication. Ryan's depressive symptoms had decreased and his ability to express his feelings towards the mother had increased. As of April 2003, Cheyenne remained resistant to efforts to decrease her depressive symptoms in therapy. She had been referred to group therapy. She continued to engage in angry and defiant behaviors at home and at school.

The department's April 22, 2003, status review report noted that Ryan and Cheyenne had been allowed, at their request, to discontinue visiting the mother after a Christmas 2002 visit. According to Cheyenne's therapist, "[The m]other mistreated Cheyenne and Ryan by openly favoring [Michael] and making several negative remarks about the children and [Ms. B., their maternal great aunt,] in front of them." This left Cheyenne feeling "very angry and hurt." In addition, the department related the children were fearful of returning to the mother and wanted to stay in their current placement. The great aunt wanted to adopt the children. A psychiatric social worker recommended

that Ryan and Cheyenne remain long-term in their placement with their maternal great aunt.

D. Michael

The oldest child, Michael, was placed in foster care. He had a series of failed placements, in part because he was "acting out." As a result, a special advocate was appointed to his case.

Michael suffered from identified learning disabilities for which he received special education services. At the time of his detention, on March 12, 2002, he was performing below grade level in reading, written expression, and mastery and application of arithmetic facts. According to his teacher, Michael did not complete assigned homework. In or around September 2002, Michael was deemed eligible for special education services due to an "'emotional disturbance.'" Michael was found proficient at an age-appropriate level in all subject areas except writing. However, a January 2003 individualized education plan report showed that Michael, then a fourth grader, was performing at a third grade level in reading and math. As of June 2003, Michael was "competent at the [fourth] grade level across all subjects" and was expected to begin fifth grade in September 2003. Michael's foster mother reported a marked increase in his attentiveness to his schoolwork since being prescribed psychotropic medication.

Michael, who suffered mental health and behavioral problems as well as having learning disabilities, was being counseled and taking medication. Michael had been hospitalized in June 2003 after a violent altercation with two classmates. Michael threatened to kill the two boys. Michael was diagnosed as "experiencing a major depressive disorder" and was prescribed psychotropic drugs. Michael was also enrolled in an alternative education program at the hospital, for which he received academic credit. Following Michael's release from the hospital, he continued to receive mental health services. In the six months ending April 2003, Michael made "steady progress in therapy." In August 2003, both Michael's foster mother and his therapist, Ms. Slagle,

stated his depressive and inattentive symptoms had "decreased tremendously" since he began, in July 2003, taking medication for attention deficit disorder and aggression. As of October 2003, both the department social worker, Derrick M. Perez-Johnson, and Ms. Slagle were of the opinion that Michael's prognosis was very positive. Both Mr. Perez-Johnson and Ms. Slagle believed Michael's chances for ending the use of medication were high.

Michael's court-appointed special advocate, Lisa Pearl, found he was thriving in his current foster placement since October 23, 2002, and his foster mother wanted to adopt him. Michael's contact with the mother had been sporadic and he was fearful of returning to her care. Michael was happy in his foster home and wanted to stay there. He wanted to be adopted by his foster mother. Michael's foster mother had expressed concern about adoption as opposed to legal guardianship because of the potential loss of services. Once assured that services would continue to be available to Michael, she affirmed her commitment to adopt him.

E. Sibling Visitation

The children had visited regularly with each other in the great aunt's home. The department social worker recommended that the siblings continue visitation with each other even if adopted. The caregivers were committed to ensuring that the children remained siblings after adoption.

F. The Section 366.26 Hearing

A contested section 366.26 hearing was held on October 1, 2003. The mother testified she had raised the children by herself until they were detained. She had visited them regularly after their detention, until the department social worker, Mr. Perez-Johnson, began making it hard for her to do so. She had attempted to maintain at least telephone contact with the children. The mother had enrolled in "His Sheltering Arms,

Inc." recovery treatment center on August 19, 2003. The mother had informed the department of that fact. In the mother's view, she was making satisfactory progress. At the conclusion of the hearing, the juvenile court terminated the mother's parental rights as to Michael, Ryan, Cheyenne, and Chelsea.

III. DISCUSSION

A. Indian Child Welfare Act

The department concedes that, as the mother contends, the juvenile court failed to ensure that the notice provisions of the Indian Child Welfare Act were met. Further, the parties agree that the lack of compliance requires that we reverse the order terminating parental rights and remand for proper inquiry and compliance with the Indian Child Welfare Act notice provisions. We agree. As the Court of Appeal has held: "If after proper inquiry and notice, the [Bureau of Indian Affairs] or a tribe determines that the minors are Indian children as defined by the [Indian Child Welfare Act], the juvenile court is ordered to conduct a new section 366.26 hearing in conformity with all provisions of the [Indian Child Welfare Act]. If, on the other hand, no response is received or the tribes [or] the [Bureau of Indian Affairs] determine that the minors are not Indian children, all previous findings and orders shall be reinstated." (*In re D. T.* (2003) 113 Cal.App.4th 1449, 1456; accord, e.g., *In re H.A.* (2002) 103 Cal.App.4th 1206, 1215; *In re Jeffrey A.* (2002) 103 Cal.App.4th 1103, 1109; *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111-112.)

B. Adoptability

The mother contends there was insufficient evidence the three oldest children—Michael K., Ryan F., and Cheyenne F.—were adoptable. We disagree. The Court of Appeal has held, "'On review of the sufficiency of the evidence, we presume in favor of

the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [].) [¶] The 'clear and convincing' standard . . . is for the edification and guidance of the [juvenile] court and not a standard for appellate review. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750 []; *In re Heidi T.* (1978) 87 Cal.App.3d 864, 871 [].) '"The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' (*Crail v. Blakely, supra,* 8 Cal.3d at p. 750.) Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' (9 Witkin, Cal. Procedure (4th ed. 1977) Appeal, § 365, p. 415.)" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881.) The Court of Appeal has further held, "At the selection and implementation hearing under section 366.26, the trial court determines whether the child is adoptable on the basis of clear and convincing evidence. (§ 366.26, subd. (c)(1); *In re David H.* (1995) 33 Cal.App.4th 368, 378 [].) On appeal, we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154 [].) We therefore 'presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' (*In re Autumn H.[,supra,]* 27 Cal.App.4th [at p.] 576 [].)" (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.)

As the Court of Appeal recently explained: "The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. (See, e.g., *In re Cory M.* (1992) 2 Cal.App.4th 935, 951 []; *In re Jennilee T.*

(1992) 3 Cal.App.4th 212, 224-225 [].) Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' (*Jennilee T., supra*, 3 Cal.App.4th at p. 223, fn. 11; *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065 []; see *In re Laura F.* (1983) 33 Cal.3d 826, 838 [].) [¶] Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*. (See *In re Scott M.* [(1993)] 13 Cal.App.4th 839, 844.)" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650, orig. italics.)

It is true that these children are not infants. At the time they were found adoptable, Michael was 10 and the twins were 9. It is also true that each of these three physically healthy children had required mental health services and medication; further, Michael had been hospitalized after a violent altercation with two classmates. But these are children who had suffered severe neglect. They were striving to overcome the consequences of that neglect. Given stable homes and the necessary help and treatment, their educational and mental health circumstances had clearly improved. Ryan was performing above grade level, had responded well to therapy, and no longer needed medication. Ryan's behavior had greatly improved. Cheyenne had also improved academically. She had made progress, albeit limited, in therapy. Michael was performing at grade level and was attentive to his schoolwork. Michael had made steady progress in therapy. Michael's depressive symptoms had decreased tremendously and his prognosis was very positive. Michael was very likely to discontinue his use of medication at some point. He was thriving in his foster mother's home. Other than the one incident involving Michael, his assault on two classmates, there was no indication of serious or potentially harmful behavioral issues. The foster parents with whom the children had been living wanted to adopt them. This was sufficient evidence to support the juvenile court's finding the children were adoptable.

C. Visitation

The mother contends the department unilaterally terminated her visitation with the children several months prior to the section 366.26 hearing, thereby substantially compromising her constitutional due process interest in parenting. This issue was not raised in the juvenile court. As a result, the department argues, it has been waived. We agree. The waiver doctrine has been repeatedly and consistently applied in dependency cases. (E.g., *In re Troy Z.* (1992) 3 Cal.4th 1170, 1181 [plea of no contest to § 300 petition foreclosed appellate challenge to sufficiency of the evidence]; *In re B.G.* (1974) 11 Cal.3d 679, 689 [failure to challenge validity of personal jurisdiction]; *In re S.O.* (2002) 103 Cal.App.4th 453, 459 [failure to raise issue of sufficiency of dependency petition]; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 956, fn. 8 [adequacy of assessment report not raised below]; *In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1037 [father waived any procedural defect by litigating on the merits]; *In re Jamie R.* (2001) 90 Cal.App.4th 766, 771-772 [mother waived statutory right to have counsel present at in camera hearing]; *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98 [father waived claimed error as to district attorney's participation by failure to object]; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 496 [mother waived object to guardianship order]; *Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1149 [mother waived lack of notice argument by failure to object]; *In re Lukas B., supra,* 79 Cal.App.4th at p. 1152 [father waived lack of notice assertion]; *In re Levi U.* (2000) 78 Cal.App.4th 191, 201 [mother waived due process claim]; *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886 [mother waived objection to Department of Children and Family Services report]; *In re Janee J.* (1999) 74 Cal.App.4th 198, 209-210 [mother waived lack of notice claim]; *In re Jesse C.* (1999) 71 Cal.App.4th 1481, 1491 [lack of notice waived]; *Armando D. v. Superior Court* (1999) 71 Cal.App.4th 1011, 1024 [father waived evidentiary objections]; *In re Alexis W.* (1999) 71 Cal.App.4th 28, 36 [mother waived claim as to denial of section 388 petition when counsel agreed court could treat petition as trial brief and resolve in context

of review hearing]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328 [mother waived insufficiency of dependency petition allegations]; *In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1484, fn. 5 [objection to removal order waived by failure to challenge below]; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1157-1158 [mother waived right to counsel claim]; *In re Amanda D.* (1997) 55 Cal.App.4th 813, 819-820 [father waived objection re lack of minors' testimony]; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339 [father waived contention re lack of bonding study by failure to request]; *In re Christopher B.* (1996) 43 Cal.App.4th 551, 558 [failure to raise forum non conveniens objection in trial court]; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885 [mother waived the right to contest finding of reasonable reunification efforts by not objecting in trial court]; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-642 [failure to raise sibling visitation issue in superior court]; *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810-811 [department of social services' failure to dispute father's right to reunification services in trial court]; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1831 [by only seeking placement with herself in superior court, mother waived right on appeal to contend child should be placed with grandmother]; *In re Mark C.* (1992) 7 Cal.App.4th 433, 446 [father's failure to pursue issue waived claim expert psychological testimony should have been admitted at dispositional proceeding]; *In re Gilberto M.* (1992) 6 Cal.App.4th 1194, 1198, 1200 [lack of notice waived when parent opposed proceeding on the merits]; *In re Riva M.* (1991) 235 Cal.App.3d 403, 411-412 [parent waived right to proof beyond a reasonable doubt test mandated by Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq.) when no objection was interposed to court's use of clear and convincing evidence standard]; *In re Richard H.* (1991) 234 Cal.App.3d 1351, 1362 [parent waived right to raise timeliness issues by failing to assert error in trial court]; *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1485 [failure to object to referee acting as temporary judge]; *In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 836 [failure to object to amendments to pleadings]; *In re Katrina L.* (1988) 200 Cal.App.3d 1288, 1299 [parent's failure to object to adequacy of oath taking waived issue]; *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038 [no objection to inadequacy of social study]; *In re Heidi T.*

(1978) 87 Cal.App.3d 864, 876 [failure to object in superior court waived issue of right to separate counsel for minors].) Having failed to raise any issue with respect to visitation in the juvenile court, the mother cannot now contend her rights were violated.

D. The Beneficial Relationship Exception, Section 366.26, subdivision (c)(1)(A)

The mother asserts she satisfied the beneficial relationship exception set forth in section 366.26, subdivision (c)(1)(A). Section 366.26 provides in relevant part, "(c)(1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights *unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:* [¶] *(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.*" (Italics added.) We find substantial evidence supported the juvenile court's finding the beneficial relationship exception did not apply. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689; *In re L.Y.L., supra,* 101 Cal.App.4th at p. 955; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

The burden was on the mother to show that termination of her parental rights would be detrimental to the children. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466; *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) The mother was required to show: she had maintained regular visitation and contact with the children; she occupied a parental role in their lives; her parental actions had resulted in a significant and positive emotional bond with the children; and that severing the relationship would result in great harm to the children. (*In re Angel B., supra,* 97 Cal.App.4th at p. 466; *In re Lorenzo C., supra,* 54 Cal.App.4th at p. 1342.) As the Court of Appeal held in the decision of *In re Autumn H., supra,* 27 Cal.App.4th at page 575, "If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (See *In re Amber M., supra,* 103 Cal.App.4th at p. 689.)

Here, even if the mother could have established regular visitation and contact, the benefits of permanent adoptive homes far outweigh any detriment the children might suffer by the termination of her parental rights. There was no evidence the mother had played a positive, nurturing, parental role in the children's lives following their detention. There was no evidence of a substantial, positive, emotional attachment between the children and the mother. The children were happy in their placements. The older children were overcoming the educational, behavioral and mental health problems occasioned in large part by the mother's neglect of them. The older children were fearful of being returned to their mother's care. They expressed no remorse over their lack of contact with the mother. This was substantial evidence the beneficial relationship exception did not apply. The mother did not meet her burden.

E. Sibling Relationship Exception

The mother contends the juvenile court erred in failing to apply the sibling relationship exception, section 366.26, subdivision (c)(1)(E). This contention was not

raised at the section 366.26 hearing. As a result, it has been waived. (*In re Anthony P., supra,* 39 Cal.App.4th at pp. 640-642; *In re Mary C.* (1995) 41 Cal.App.4th 71, 80, fn. 6.) In any event, the children's caretakers had expressed their commitment to continued sibling visitation following adoption.

IV. DISPOSITION

The October 1, 2003 order terminating Asyeshah K.'s parental rights as to her four children, Michael K., Ryan F., Cheyenne F., and Chelsea G., is reversed. The matter is remanded for proper inquiry and compliance with the notice provisions of the Indian Child Welfare Act. (25 U.S.C. § 1912(a).) If after proper inquiry and notice it is determined the minors *are* subject to the Indian Child Welfare Act, the juvenile court is to conduct a new Welfare and Institutions Code section 366.26 hearing. The new permanency planning hearing shall be conducted in conformity with all the provisions of the Indian Child Welfare Act. If, on the other hand, no response is received or it is determined that the Indian Child Welfare Act is inapplicable, the order terminating the mother's parental rights shall be reinstated. In all other respects, the order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

GRIGNON, J. MOSK, J.